

Government Accountability and Oversight Committee REVISED STAFF REPORT

Agenda Item:	8	Name:	Mike Alvine		
Proposed No.:	2011-0493	Date:	March 27, 2012		
Invited:	Ken Guy, Director, Finance and Business Operations Division, DES				

SUBJECT: An ordinance making willful violation of wage payment requirements a basis for debarment or suspension from consideration for the award of contracts with the county; and amending Ordinance 12138, Section 18, as amended, and K.C.C. 4.16.145.

SUMMARY:

The ordinance would give the Executive authority to debar or suspend a vendor or contractor from doing business with King County if the Washington State Department of Labor and Industries finds the company in "willful" violation of state and federal wage provisions.

UPDATE:

The substitute ordinance received a Do Pass recommendation for the Council. At Council it was re-referred to the GAOFP Committee in order to make additional changes. Those changes are described later in this report under AMENDMENT.

BACKGROUND:

King County code 4.26.245 already authorizes the Executive to suspend or exclude (debar) firms from doing business for various activities including criminal offenses of state or federal law such as theft, forgery, bribery, falsification or destruction of records, receiving stolen property and violation of antitrust statutes. In addition, the Executive can suspend or debar companies from doing business with King County for unsatisfactory performance in a recent contract or engagement and for ethics violations.

The Washington State Department of Labor and Industries (L&I), among other responsibilities, is the watchdog agency that ensures employers follow the minimum wage law, pay overtime correctly and pay employees their earned wages, including their last paycheck when separating employment. This authority can be found in chapter 49.48 RCW. Last year L&I reported over 4,000 complaints by employees of wage theft. L&I investigates these claims and must make a determination if the complaint is valid within 60 days. If L&I determines that an employer has illegally withheld wages from an employee they issue a citation and the employer is obligated to pay the wages due. In more serious cases, L&I can find the employer is in "willful" violation of wage laws. In other words, the employer is

knowingly violating wage laws and civil penalties can apply. L&I considers an employer to be a "repeat willful violator" if they have two willful violation findings in a three-year period.

ANALYSIS:

The ordinance would give the Executive authority to debar or suspend a vendor or contractor from doing business with King County if the Washington State Department of Labor and Industries finds a company in "willful" violation of state and federal wage provisions. L&I makes these determinations on a regular basis.

Chapter 49.48 RCW provides L&I with specific authorities and remedies to pursue employers found in violation of state wage laws. It also allows L&I to have reciprocal agreements with other states. This could allow for suspension or debarment of firms that are willful violators of wage laws that are based in other states.

AMENDMENT:

At the chair's request staff drafted an amendment that reconfigures K.C.C. 4.16.145. It divides the problematic behavior of persons, firms or other legal entities that want to do business with King County into two groups. The most serious behaviors, such as convictions under state or federal statues for embezzlement, theft, forgery, bribery, falsification or destruction of records and receiving stolen property and other offenses are grounds for mandatory suspension or debarment from doing business with King County. Willful violations of state wage laws fall into the category of mandatory suspension or debarment as do persons, firms or other legal entities that have had civil judgments against them for violation of wage payment laws. Persons, firms or other legal entities that commit these offenses would be eligible to do business with King County after a five-year period with no further offenses.

Lesser offenses such as violations of ethical standards or failure to perform or poor performance on previous county contracts are not conditions for mandatory suspension or debarment, although the Executive has the authority to suspend or debar for this second category. Added to this category of offenses for which the Executive has the authority to suspend or debar a person, firm or individual is the situation where King County may be involved in a lawsuit with the entity.

There is also a provision calling on the Executive to create a due process procedure for persons, firms or other legal entities to explain why they should not be suspended or debarred.

Section 2. of the striking amendment calls for the Executive to develop supplemental bidder criteria. In 2007 state law changed to allow jurisdictions to develop supplemental bidder criteria. The City of Seattle has, for example, already developed supplemental bidder criteria. The striker calls for criteria related The King County Strategic Plan.

Finally, there is a "safety valve" clause that if the Executive determines that significant harm would accrue to King County by suspending or debarring a person, firm or other legal entity from doing business with King County, the Executive can decide not suspend or debar but must inform the Council of his decision within 30 days.

ATTACHMENTS:

- Proposed Substitute Ordinance 2011-0493
 Striking Amendment 1.2 to Proposed Substitute Ordinance 2011-0493
 Title Amendment 1 to Proposed Substitute Ordinance 2011-0493
 City of Seattle Supplemental Bidder Responsibility Criteria

March 6, 2012

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Proposed No.: Ferguson

2011-0493

STRIKING AMENDMENT TO PROPOSED ORDINANCE 2011-0493, VERSION 2

- 2 On page 1, beginning on line 6, strike everything through page 6, line 103, and insert:
- 3 "STATEMENT OF FACTS:
- 1. King County's vision, as stated in the county's strategic plan, is to be "a diverse and dynamic community with a healthy economy and environment where all people and businesses have the opportunity to thrive." Among the guiding principles contained in the strategic plan are accountability, fairness and justice.
- 2. Employer violation of wage payment requirements runs contrary to

 King County's vision and guiding principles. Such violations, also known

 as "wage theft," can take a number of forms, including withholding an

 employee's last paycheck when the employee leaves a job, not paying for

 all hours worked, stealing tips, failing to pay overtime as required and

 paying less than the minimum wage.
 - 3. Wage theft is a nationwide problem. According to a 2008 survey funded by the Ford Foundation, of the four thousand three hundred eighty-seven workers interviewed in low-wage industries in the three largest

18 United States cities, which are Chicago, Los Angeles and New York, 19 sixty-eight percent had experienced at least one pay-related violation of 20 the law in the previous work week. The average worker lost fifty-one 21 dollars out of average weekly earnings of three hundred thirty-nine 22 dollars, for a loss of fifteen percent of earnings. 23 4. In Washington state, according to the Washington state Department of 24 Labor and Industries, an average of eleven Wage Payment Act violation 25 claims are filed each day, totaling over four thousand claims in 2010. 26 5. Wage theft commonly occurs in low-wage industries, but is not limited 27 to any particular sector of the economy, and no group of workers is 28 immune. 29 6. Wage theft detrimentally impacts workers and hurts businesses that 30 follow the law. Businesses are placed at a disadvantage when competitors 31 keep costs artificially low by unlawfully withholding payments from their 32 employees. Taxpayers shoulder a disproportionate share of the national 33 tax burden when employers fail to pay payroll taxes. Unpaid workers are 34 deprived of money to buy goods and services that benefit their families 35 and the local economy. 36 7. The elimination of wage theft will foster fair business practices and 37 promote the dignity and economic security of employees. 38 8. Currently, in Washington state, wage theft complaints are handled by 39 the Washington state Department of Labor and Industries. Wage theft is 40 punishable by civil fines and the recovery of lost wages by the employee.

41	According to RCW 49.48.082 through 4.48.087, the Department of Labor
42	and Industries issues a citation for a willful violation when an employer
43	has violated a wage payment requirement and the violation was knowing
44	and intentional and neither accidental nor the result of a bona fide dispute.
45	9. King County contracts with outside vendors, awarding an average of
46	five hundred professional, construction, and goods and services contracts
47	each year. Since 2006, the county has awarded more than three thousand
48	contracts to over four thousand outside vendors for a combined total of
49	over \$3.5 billion.
50	10. King County should not reward employers who are "willful violators"
51	of state wage laws by awarding them a county contract, but should
52	promote fair and ethical business practices that conform to the law and
53	encourage a growing and diverse King County economy and vibrant,
54	thriving and sustainable communities.
55	11. Wage theft and certain criminal offenses such as convictions under
56	state or federal statues for embezzlement, theft, forgery, bribery,
57	falsification or destruction of records and receiving stolen property and
58	other offenses are grounds for suspension or debarment from doing
59	business with King County.
60	BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:
61	SECTION 1. Ordinance 12138, Section 18, and K.C.C. 4.16.145 are hereby
62	amended to read as follows:

63	The executive shall comply with the following procedures in contract debarment
64	and suspension actions.
65	A. After reasonable notice to the person involved and reasonable opportunity for

- A. After reasonable notice to the person involved and reasonable opportunity for that person to be heard, the executive shall have authority to debar a person, firm or other legal entity for cause from consideration for award of contracts with the county. The debarment shall be for a period of not more than two years.
- B. The executive shall have the authority to suspend a person, firm or other legal entity from consideration for award of contracts if there is probable cause for debarment. The suspension shall be for a period of not more than six months.
- C. The authority to debar or suspend shall be exercised ((in accordance with)) by procedures established by the executive in accordance with this chapter.
- D. The ((causes for debarment or suspension include the following)) executive

 shall suspend or debar a person, firm or other legal entity for:
 - 1. Conviction within the five years preceding commencement of the debarment or suspension for commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of ((such)) the contract or subcontract;
 - 2. Conviction within the five years preceding commencement of the debarment or suspension under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property((5)) or any other offense indicating a lack of business integrity or business honesty ($(\frac{1}{5})$) and directly affects responsibility as a contractor to the county;

85	3. Conviction within the five years preceding commencement of the debarment
86	or suspension under state or federal antitrust statutes arising out of the submission of bids
87	or proposals; <u>or</u>
88	4. ((Violation of contract provisions, such as the following, of a character which
89	is regarded by the executive to be so serious as to justify debarment action:
90	a. deliberate failure without good cause to perform in accordance with the
91	specifications or within the time limit provided in the contract, or
92	b. substantial failure to comply with commitments to and contractual
93	requirements for participation by minority and women's business enterprises and equal
94	employment opportunity, or
95	c. a recent record of failure to perform or of unsatisfactory performance in
96	accordance with the terms of one or more contracts; provided that failure to perform or
97	unsatisfactory performance caused by acts beyond the control of the contractor shall not
98	be considered to be a basis for debarment;)) Violation of state wage payment laws,
99	including:
100	a. willful violation of a wage payment requirement, as defined in RCW
101	49.48.082, where the citation and notice of assessment for the violation was issued within
102	the five years preceding commencement of the debarment or suspension; or
103	b. civil judgments entered by a court against the person, firm or other legal
104	entity for violations of wage payment requirements under state law within the five years
105	preceding commencement of the debarment or suspension.
106	E. The executive should suspend or debar a person, firm or other legal entity for:

107	((5.)) 1. Violation of ethical standards set forth in contracts with the county;
108	$((\Theta \mathbf{r}))$
109	2. Violation of contract provisions, such as the following, of a character that is
110	regarded by the executive to be so serious as to justify debarment action:
111	a. deliberate failure without good cause to perform in accordance with the
112	specifications or within the time limit provided in the contract;
113	b. substantial failure to comply with commitments to and contractual
114	requirements for participation by minority and women's business enterprises and equal
115	employment opportunity; or
116	c. a recent record of failure to perform or of unsatisfactory performance in
117	accordance with the terms of one or more contracts, though failure to perform or
118	unsatisfactory performance caused by acts beyond the control of the contractor shall not
119	be considered to be a basis for debarment; or
120	((6.)) 3. Any other cause that the executive determines to be so serious and
121	compelling as to affect responsibility as a contractor to the county, including debarment
122	by another governmental entity for any cause similar to those set forth ((herein)) in this
123	subsection E.
124	$((E_{-}))$ <u>F.</u> The executive shall issue a written decision stating the reasons for the
125	debarment or suspension. Such <u>a</u> decision shall be promptly mailed or otherwise
126	furnished to the debarred or suspended person and any other party intervening.
127	((F.)) <u>G.</u> The executive's decision of debarment or suspension, unless based on
128	fraudulent information, shall constitute the final and conclusive decision on behalf of the
129	county. After a final decision has been made, the executive shall submit a report to the

council giving the name of the person, firm or other legal entity suspended or debarred and the reason(((s))) or reasons for such a suspension or debarment.

H. Notwithstanding subsection D. or E. of this section, the executive has the authority to not suspend or debar a person, firm or legal entity if the executive determines significant harm would accrue to the county by suspension or debarment of the person, firm or other legal entity or that mitigating circumstances do not warrant debarment or suspension, and notifies the council within thirty days of the executive's determination.

SECTION 2. A. The executive shall develop supplemental bidder responsibility criteria, as authorized in RCW 39.04.350, for the purposes of promoting fair competition between bidders and ensuring the award of contracts conforms to the goals of the King County Strategic Plan.

B. The executive shall submit a report on the development of supplemental bidder responsibility criteria by July 1, 2012, in the form of a paper original and an electronic copy with the clerk of the council, who shall retain the original and provide an electronic copy to all councilmembers and to the committee coordinator for the government accountability, oversight and financial performance committee or its successor."

EFFECT: Makes suspension and debarment mandatory for wage theft and a variety of criminal offenses, such as convictions under state or federal statues for embezzlement, theft forgery, bribery, falsification or destruction of records and receiving stolen property, except that the Executive has the authority not to debar a person, firm or other legal entity if the Executives determines that significant harm

would come to the County if suspension or debarment occurred. Requires due process before imposing suspension or debarment. Also directs the Executive to develop supplemental responsible bidder criteria. Makes technical corrections. Project Name

Revised 12/10/2009

Supplemental Bidder Responsibility Criteria

After bid opening and prior to award, the apparent low bidder must complete, sign and submit this form with attachments to the Contracting Services Division (See instructions at the end of this form). The form must be submitted no later than three (3) Business Days after the Bid Opening Date, unless a different time and date is required by the specifications. The Owner may also request the Form from additional bidders.

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Part A: General Company	Information	
Company Name		
Address		
Contact Name and Title		
Contact Phone		Contact E-mail
Years in business as a		Years in business as
Prime Contractor		a sub-contractor
Years in business i	ınder present Nan	me /
List any former company the company, it principals has operate	Owners, and/or	its
Explain reason for name of	hange(s) in the pa 5 yea	

Part B: Work Experience

1. Work Completed

D\A/#

On the attached Project Experience form, please list all construction contracts completed in the past five (5) years (or longer if required in the specifications) which are similar in type, size and scope of work to this project. If this project contains specific supplemental bidder qualifications, the specifications will define type, size, and scope of work along with any other requirements for the number of projects and date of projects.

Note: In evaluating whether the projects were "successfully completed," the Owner may check owner references for previous projects and use the owner's assessment of the Bidder's performance, including but not limited to the following areas, so please be thorough in your descriptions:

- Quality control;
- Safety record;
- Timeliness of performance;
- Use of skilled personnel;
- Management of subcontractors;
- Availability of and use of appropriate equipment;
- Compliance with contract documents;
- Management of submittals process, change orders and close out; and
- Any other criteria listed on this form.

2. Personnel

List the Superintendent and Project Manager who will be assigned to this project. Identify any concurrent projects in process, or planned projects, and how their time will be allotted among the projects. Attach detailed resumes for each with a listing of all projects supervised or managed within the past five (5) years (or longer if required in the specifications), with references and contact information for each project. If this project contains specific supplemental bidder qualifications, the specifications will define type, size, and scope of work along with any other requirements for the number of projects and date of projects.

Superintendent	Project Manager

Note: In evaluating the resumes, the Owner may check owner references for previous projects and use the owner's assessment of the Personnel's performance, including but not limited to the following areas, so please be thorough in your descriptions:

- Quality control;
- Safety record;
- Timeliness of performance;
- Use of skilled personnel;
- Management of subcontractors;
- Availability of and use of appropriate equipment
- Compliance with contract documents;
- Management of submittals process, change orders and close out; and
- Any other criteria listed on this form.

3. Equipment

List all equipment owned or leased which you intend to use on this project:

Type of Equipment		Size or Capacity	Owned or leased?
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	2000		

4. Work in Progress

List all construction contracts in progress. List project name, Owner, contract amount, percent of work performed with own forces, anticipated completion date.

Project Name	Owner and Contact Information	Contract Amount	% Self Performed	Completion Date

and Industries.

	For the following, please check the appropriate box and attach an explanation if required.
	> A "yes" answer does not automatically make your firm not responsible, but your firm will be evaluated based on your explanation.
Par	t C: Compliance History
Per	formance Evaluation
6.	Has your firm, under present or past business name, received one or more "Deficient "or "Inadequate" evaluations from the City of Seattle or another governmental agency on a construction project within the last five (5) years?
	☐ Yes ☐ No
	If "yes" attach a separate, signed/dated statement listing the projects and an explanation.
Del	barment
7. Saf	
	Yes No If "yes," attach a separate signed/dated statement describing each citation, including information about the dates of the citations, the nature of the violation, the project on which the citation(s) was or were issued, the amount of penalty paid, if any. If the citation was appealed and a decision has been issued, state the case number and the date of the decision.
9.	List the Experience Factor (Washington workers' compensation insurance) of your firm for each of the past three years. NOTE: An Experience Factor is calculated annually by the Washington Department of Labor

	Current Year:		Previous Year:		Year to previous year:		
L		•	actor for any of the have an Experience		ars is or was 1.00 or high	ner, attach	a letter of
Envi	ronmental						
10.	environmental en	forcemen	· · ·	er your firr	ency, or any other stat m or the owner of a pro	•	
	Yes	☐ No					
	the dates of the issued, the amount of the case not be the case of	citations, t unt of pena umber and	he nature of the vio	lation, the p	ing each citation, includir project on which the citat as appealed and a decision	ion(s) was c	r were
	D: Social Equity Co	_					
Soci	al Equity – Discrimin	ation					
1	process to have dis leasing practices? Yes If "yes," attach a involved, the na	Scriminate No a separate s me of the p	d in contracting, e	mployment that ide if the invest	er been found by a cou t, in the provision of pu ntifies the type of violati igation, the resolution in	ublic servic	es, or in
Soci	al Equity – Affirmati	ve Efforts					
12.	Has your firm, within	n three (3)	years of the bid subr	mittal date,	failed to meet :		
•	a. Mandatory DBE u	tilization go	als, for any public w	orks projec	t worked on?		
	Yes	No	Not Appli	cable			
1	b. Voluntary WMBE	utilization {	goals for any public	works proje	ct worked on?		
			ttach a separate sigi umstances for not m		tatement that includes tl	ne project n	ame,
Аррі	renticeship						
			B) years of the bid s projects estimated		date, failed to meet req \$1 million?	uired appro	enticeship

Yes N	lo Not Applica	able	
• • •	parate signed/dated state not meeting utilization.	ement that includes the project i	name, public agency, and
Prevailing Wage			
) years in which your firm was re tate or federal prevailing wage la	
Yes N	lo		
the name of the proje	ect, the date of its comple	nent describing the nature of eac tion, the public agency; the num ck wages and penalties that your	ber of employees who
Bonding/Surety Claims			
15. For each bonding compar name, and phone number		s, please list the bonding compar	ny name, address, agent's
Bonding Company	Address	Name of Bonding Agent	Agent's Phone Number
past firm's behalf as a rebond issued on your firm' Yes No If "yes," attach a sepatelephone number of	sult of a default or to says behalf, in connection we have signed/dated statements the claimant or bonding	y surety company made any pay tisfy any claims made against a ith a construction project. ment indicating the amount of eacompany, the date of the claim, olution of claim if resolved, the n	performance or payment ch claim, the name and the grounds for the claim
was resolved if resolv resolved.	ed, the nature of the reso	olution and the amount, if any, at	t which the claim was
Criminal Convictions			
<u>-</u>		state or federal criminal action for the criminal conviction of any f	
Yes No			

Supplemental Bidder Responsibility Criteria

If "yes," attach a separate signed/dated statement, identifying who was involved, the name of the
person or persons convicted, the name of the public agency, the date of the investigation and the
grounds for the finding.

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years which have resulted in partial or final settleme litigation. Please include information on any pending please attach a separate signed/dated statement, id-	nt of the contract by mediation, arbitration, or claims or litigation. If you have additional claims,
None/ Not Applicable	
Name of Project	Name of Owner and Contact Information
Name of Claimant	Claimant Contact information
Claim Description	
Name of Project	Name of Owner and Contact Information
Name of Claimant	Claimant Contact information
	The state of the s
Claim Description	
Name of Project	Name of Owner and Contact Information
The state of the s	A Company of the Comp
Name of Claimant	Claimant Contact information
Claim Description	
Part F: Signature The undersigned certifies that the information and data condisclose information or submitting false or misleading into of award, contract termination, or may impact your ability	formation may result in rejection of your bid, revocation
Signature of Authorized Representative	Date
Printed Name of Authorized Representative	Title

Instructions for the Supplemental Bidder Responsibility Form

After bid opening and prior to award, the apparent low bidder must complete, sign and submit this form with attached documentation to the Contracting Services Division by one of the methods listed below. This information may be requested from additional bidders at the Owner's discretion, and if so, shall be provided within three (3) Business Days.

The Owner's evaluation may include further investigations to establish the responsibility, qualifications, financial resources and experience of a Bidder to complete the Work of this Contract. The Owner may contact previous owners or others to validate the information provided by the Bidder. The Owner will assess the information provided and other information gathered in determining whether a Bidder is responsible. Please list all information you feel is relevant to the Owner making an informed decision. The Owner reserves the right to request additional information from the Bidder.

For criteria with check boxes, the Bidder will check either "Yes" or "No." Where provided, the Bidder may check "Not Applicable" if the Bidder has not had a project which included this requirement. If "Not Applicable" is not an option, the Bidder would check "No." For each "Yes" answer on the form, the Bidder must provide a signed and dated statement providing the project information requested and explaining the extenuating circumstances.

Form submittal:

Submit this form to Contracting Services Division (CSD) of the City of Seattle Department of Executive Administration by one of the following methods by the close of business (5:00 pm) on the third (3) Business Day after the Date of Bid Opening (unless the specifications provide a different time or date):

Email (preferable) Lourdes. Bonifacio@ seattle.gov

with the Email Subject line: Supplemental Bidder Form for PW# [insert number]

Fax to: 206-684-4511 Attention: Lourdes Bonifacio,

Supplemental Bidder Form for PW# [insert number]

Street Address: 700 – 5th Ave, Room 4112, Seattle Municipal Tower, Seattle WA 98104

Attention: Lourdes Bonifacio,

Supplemental Bidder Form for PW# [insert number]

Post Office: Post Office Box: Seattle Municipal Tower, PO Box 94687, Seattle WA 98124-4687

Attention: Lourdes Bonifacio,

Supplemental Bidder Form for PW# [insert number]

If sending by courier (UPS, FedEx, etc.) the street address must be used. If mailing by regular US mail, the Post Office Box must be used. Bidders are responsible for ensuring that the proper Zip code is used. The City of Seattle will not be responsible for a late form.

Questions contact Maura Donoghue, Maura.donoghue@seattle.gov or 206-684-0386

Revised 12/10/2009

Attachment to Supplemental Bidder Responsibility Criteria Work Experience Form

Please complete one form per project and include the minimum number of projects (and forms) as requested. You may include any additional work experience you deem relevant to determining bidder responsibility. Please be sure to provide a thorough description of the work in order to demonstrate how your firm meets any required experience detailed in the specifications. You may attach additional documentation if needed.

	PR	OJECT DETAIL					
BIDDER'S COMPANY NAME		BIDDER CONTACT	BIDDER CONTACT NAME & PHONE NUMBER				
PROJECT NAME		PROJECT PW CONTRACT NUMBER					
PROJECT OWNER		PROJECT LOCAT	TION				
PROJECTOWNER	FINOLOGIA	PROJECT LOCATION					
PROJECT OWNER CONTACT	OWNER'S TELEP	OWNER'S TELEPHONE NUMBER					
NOTICE TO PROCEED DATE	FINAL COMPLETION DATE	AWARDED CONT VALUE	TRACT	FINAL CONTRACT VALUE			
PRIME CONTRACTOR NAME (IF NOT BIDDER) CONTRACTOR CONTACT NAME & PHONE NUMBER (IF NOT BIDDER)							
BRIEF PROJECT DESCRIPTIO	N .						
1000 0000 10000 10000 10000 10000 10000 10000							
BRIEF SUMMARY OF TECHNIC SIMILAR EXPERIENCE AND A	CAL WORK COMPLETED NY REQUIRED EXPERIE	BY BIDDER, INCLUDING NCE DETAILED IN THE SE	ANY RELÉV PEC.	ANT DETAILS TO DEMONSTRATE			
**							